



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0152]

RIN 1625-AA87

Security Zone; Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the Cumberland River at Mile Marker (MM) 190.7 to MM 191.3, from the Woodland Street Bridge to the Korean Veterans Boulevard Bridge, extending 100 feet from the left descending bank, from April 25, 2019 through April 27, 2019. This security zone is needed to protect the participants of the National Football League (NFL) draft, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during the NFL Draft in Nashville, TN. Entry into the security zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 3 p.m. on April 25, 2019 through 10 p.m. on April 27, 2019. This rule will be enforced from 3 p.m. through 11 p.m. on April 25, 2019, from 2:30 p.m. through 11:59 p.m. on April 26, 2019, and from 9 a.m. through 10 p.m. on April 27, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0152 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer First Class Nicholas Jones, Marine Safety Detachment Nashville U.S. Coast Guard; telephone 615-736-5421, email Nicholas.J.Jones@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
<i>FR</i>	<i>Federal Register</i>
MM	Mile Marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable. It is impracticable to publish an NPRM because we must establish this security zone by April 25, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to prevent possible loss of life and property.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential security needs associated with the NFL Draft from April 25, 2019 through April 27, 2019, present a safety and security concern. The purpose of this rulemaking is to ensure the safety and security of the NFL Draft participants, vessels, and waterfront facilities within the regulated area before, during, and after the scheduled times.

IV. Discussion of the Rule

This rule establishes a temporary security zone on the Cumberland River from MM 190.7 to MM 191.3, from the Woodland Street Bridge to the Korean Veterans Boulevard Bridge, extending 100 feet from the left descending bank, from April 25, 2019 through April 27, 2019. The duration of the security zone is intended to ensure the safety and security of the participants of the NFL Draft, vessels, and waterfront facilities before, during, and after the scheduled times. Vessels are not permitted to enter or transit this temporary security zone without obtaining permission from the COTP or a designated representative.

Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

Persons and vessels permitted to enter the security zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the security zone, as well as any changes in the dates and times of enforcement.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. This rule is limited to less than one mile of the Cumberland River, at a location that is not expected to have heavy vessel traffic at the specified times of enforcement, and which will last for only three days. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16

about the regulated area and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary security zone on the Cumberland River at MM 190.7 to 191.3, from the Woodland Street Bridge to the Korean Veterans Boulevard Bridge, extending 100' out from the left descending bank, from April 25, 2019 through April 27, 2019. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0152 to read as follows:

§ 165.T08-0152 Security Zone; Cumberland River, Nashville, TN.

(a) Location. The following area is a security zone: all navigable waters of the Cumberland River, Mile Marker (MM) 190.7 to MM 191.3, from the Woodland Street Bridge to the Korean Veterans Boulevard Bridge, extending 100’ out from the left descending bank.

(b) Effective period. This section is effective from 3 p.m. on April 25, 2019 through 10 p.m. on April 27, 2019.

(c) Periods of enforcement. This section will be enforced from 3 p.m. through 11 p.m. on April 25, 2019, from 2:30 p.m. through 11:59 p.m. on April 26, 2019, and from 9 a.m. through 10 p.m. on April 27, 2019.

(d) Regulations. (1) In accordance with the general regulations in §165.23, entry into this security zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or

a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465.

(2) Persons and vessels permitted to enter the security zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the security zone, as well as any changes in the dates and times of enforcement.

Dated: March 27, 2019.

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley.
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